

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

30097

FILE: B-216212

DATE: December 14, 1984

MATTER OF: Ray Stangland

DIGEST:

Where a court of competent jurisdiction has denied the protester's motion for a preliminary injunction but has not dismissed the case or requested an advisory opinion from GAO, GAO will not review the matter.

Ray Stangland protests the award of a contract to Jerry Muckler by the Department of Agriculture under invitation for bids No. R2-03-84-64 for thinning services in government forests. We dismiss the protest.

Stangland, the second low bidder, contends that the agency improperly permitted Muckler, the low bidder, to correct his bid. Stangland asserts that there was no convincing evidence as to what price Muckler intended to bid.

While this protest was pending, Stangland filed suit in the United States District Court for the District of South Dakota, Western Division (Civil Action No. 84-5152), for a temporary restraining order (TRO) and a preliminary injunction to enjoin contract performance until our Office resolved Stangland's protest.

The court denied the TRO on October 29, 1984. On November 6, it held an evidentiary hearing, including testimony from Stangland and Muckler, on the preliminary injunction request. The court subsequently denied the preliminary injunction, finding that the agency had made "a credibility determination and that there was a rational basis for its decision." The court has informed us that the suit has not been dismissed and that it does not want an opinion from our Office.

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As a general rule, our Office will not decide matters where the issues involved are before a court of competent jurisdiction or have been decided on the merits by such a court. 4 C.F.R. § 21.10 (1984). We will, however, give an advisory opinion where the court requests, expects, or otherwise expresses an interest in our views. See Black Construction Corp., B-213823, Apr. 6, 1984, 84-1 CPD ¶ 378. We will also review a protest if the court action has been dismissed without prejudice. See Optimum Systems, Inc., 56 Comp. Gen. 934 (1977), 77-2 CPD ¶ 165. The reason is that a dismissal without prejudice generally leaves the parties in the same position they would have been if no court action had been brought. Moore v. St. Louis Music Supply Co., Inc., 539 F.2d 1191 (8th Cir. 1976).

As pointed out above, the court here is not interested in our opinion and although it denied the preliminary injunction, it has not dismissed the case, with or without prejudice. Under these circumstances, we will not review the protest.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel